
HOUSE BILL No. 1780

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5-7; IC 4-22-2-28; IC 13-14; IC 13-17-2; IC 13-18-1; IC 13-19-2.

Synopsis: Environmental rulemaking boards. Places the technical secretary and legal counsel of each environmental rulemaking board (ERB) under the management of the office of environmental adjudication. With respect to rulemaking by an ERB, expands the duties of the technical secretary, limits the involvement of the department of environmental management, and requires earlier consideration of certain information on fiscal impact. With respect to environmental nonrule policy documents, requires publication of notice of proposed adoption by an ERB, and provides for public comments. Adds an economist to the membership of each ERB. Repeals provisions allowing appointment of a proxy for meetings by an ex officio ERB member.

Effective: July 1, 2003.

Friend, Goodin

January 21, 2003, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1780

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-21.5-7-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The office of
3 environmental adjudication is established to:

4 (1) review, under this article, decisions of the commissioner of the
5 department of environmental management; and

6 (2) **manage the technical secretary and the legal counsel for**
7 **the boards under:**

8 (A) IC 13-17-2;

9 (B) IC 13-18-1; and

10 (C) IC 13-19-2.

11 (b) **The office of environmental adjudication shall:**

12 (1) **conduct** adjudicatory hearings required to implement:

13 (1) (A) air pollution control laws (as defined in IC 13-11-2-6),
14 water pollution control laws (as defined in IC 13-11-2-261),
15 environmental management laws (as defined in
16 IC 13-11-2-71), and IC 13-19; and

17 (2) (B) rules of:



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1 ~~(A)~~ (i) the air pollution control board;
 2 ~~(B)~~ (ii) the water pollution control board;
 3 ~~(C)~~ (iii) the solid waste management board; and
 4 ~~(D)~~ (iv) the financial assurance board; **and**
 5 shall be conducted by the office of environmental adjudication under
 6 ~~IC 4-21-5~~.

7 **(2) notify a board referred to in subdivision (1)(B) of the**
 8 **results of an adjudicatory hearing if a rule of the board is a**
 9 **subject of the hearing.**

10 SECTION 2. IC 4-21.5-7-4 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. **(a)** The office
 12 consists of the following employees:

13 (1) A director, appointed by the governor, who may serve as an
 14 environmental law judge.

15 (2) Environmental law judges, employed by the director.

16 **(3) The board technical secretaries appointed under:**

17 **(A) IC 13-17-2-12;**

18 **(B) IC 13-18-1-11; and**

19 **(C) IC 13-19-2-10.**

20 **(4) The board legal counsel appointed under:**

21 **(A) IC 13-17-2-13;**

22 **(B) IC 13-18-1-12; and**

23 **(C) IC 13-19-2-11.**

24 **(5)** Any other staff, employed by the director, that are necessary
 25 to carry out the functions of the office.

26 (b) In the event of a vacancy, the governor shall appoint the director
 27 based upon recommendations by a four **(4)** member ~~(4)~~ panel. Not
 28 more than two (2) members of the panel may be affiliated with the
 29 same political party. The panel shall consist of:

30 (1) one (1) person, who shall serve as the chair of the panel,
 31 appointed by the chief justice of the supreme court of Indiana;

32 (2) one (1) person appointed by the governor;

33 (3) one (1) person appointed by the speaker of the house of
 34 representatives; **and**

35 (4) one (1) person appointed by the president pro tempore of the
 36 senate;

37 The panel shall nominate three (3) candidates for each vacancy and
 38 certify them to the governor as promptly as possible, but not later than
 39 sixty (60) days from the date a vacancy occurs. Not later than thirty
 40 (30) days after receipt of the panel's list of three (3) candidates, the
 41 governor may select one (1) candidate from the panel's list, or the
 42 governor may request that the panel nominate three (3) additional



1 candidates. The panel shall meet whenever there is a vacancy in the
2 director position.

3 **(c) The director shall:**

4 **(1) identify five (5) candidates for the technical secretary**
5 **position for each of the boards under:**

6 **(A) IC 13-17-2-12;**

7 **(B) IC 13-18-1-11; and**

8 **(C) IC 13-19-2-10; and**

9 **(2) employ the candidate selected by each board under the**
10 **sections referred to in subdivision (1).**

11 **(d) The director shall identify five (5) candidates for the legal**
12 **counsel position for each of the boards under:**

13 **(1) IC 13-17-2-13;**

14 **(2) IC 13-18-1-12; and**

15 **(3) IC 13-19-2-11.**

16 **(e) If the director determines that there is insufficient funding**
17 **or workload to hire one (1) legal counsel for each board, the**
18 **director may employ one (1) or two (2) individuals as legal counsel**
19 **to serve any or all of the three (3) boards as determined under this**
20 **subsection. The director shall provide each board the same list of**
21 **candidates. The board shall rank the candidates. The director shall**
22 **select the highest ranked candidate or candidates. The director**
23 **may develop an appropriate ranking system in cooperation with**
24 **the boards.**

25 **(f) Subject to subsection (g), the director may dismiss for cause:**

26 **(1) a technical secretary employed under subsection (c); or**

27 **(2) legal counsel employed under subsection (d).**

28 **(g) A dismissal under subsection (f) must be approved by a**
29 **two-thirds (2/3) majority of:**

30 **(1) the board for which the individual is employed; or**

31 **(2) if the individual serves more than one (1) board, at least**
32 **one (1) of the boards for which the individual is employed.**

33 **SECTION 3. IC 4-21.5-7-6 IS AMENDED TO READ AS**
34 **FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) An**
35 **environmental law judge hired after July 1, 1995, board legal counsel**
36 **referred to in section 4 of this chapter, and the director must:**

37 **(1) be attorneys admitted to the bar of Indiana;**

38 **(2) have at least five (5) years of experience practicing**
39 **administrative or environmental law in Indiana;**

40 **(3) be independent of the department of environmental**
41 **management; and**

42 **(4) be subject to all provisions applicable to an administrative law**

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judge under this article.

(b) The director or an environmental law judge may be removed for cause under:

(1) this article;

(2) IC 4-15-2; or

(3) applicable provisions of the Code of Judicial Conduct.

SECTION 4. IC 4-21.5-7-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 10. The salaries of board technical secretaries and board legal counsel referred to in section 4 are paid from:**

(1) the environmental management permit operation fund established by IC 13-15-11-1; and

(2) the Title V operating permit program trust fund established by IC 13-17-8-1.

SECTION 5. IC 4-22-2-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council concerning the council's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(b) The agency shall also submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars (\$500,000) on the regulated entities to the legislative services agency after the preliminary adoption of the rule. **Except as provided in subsection (c),** before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:

(1) state; ~~and~~

(2) **political subdivisions; and**

(3) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary

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to prepare the fiscal analysis. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

(c) With respect to a proposed rule subject to IC 13-14-9-3(7), the legislative services agency shall:

(1) consult with the department of environmental management to determine the time a fiscal analysis is required under IC 13-14-9-3(7); and

(2) prepare the fiscal analysis referred to in subsection (b) by the time referred to in subdivision (1).

SECTION 6. IC 13-14-1-11.5, AS AMENDED BY P.L.261-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.5. (a) If the department utilizes a policy or statement that:

(1) interprets, supplements, or implements a statute or rule;

(2) has not been adopted in compliance with IC 4-22-2;

(3) is not intended by the department to have the effect of law; and

(4) is not related solely to internal department organization;

the **proposed** policy or statement may not be put into effect until the requirements of subsections (b) and (c) have been met.

(b) The technical secretary of the appropriate board shall, at least five (5) months before presentation of the proposed policy or statement by the department to the board under subsection (c):

(1) present the proposed policy or statement to the board; and

(2) provide the board a preliminary briefing on the proposed policy or statement.

(c) After the requirements of subsection (b) are met, the department shall present the proposed policy or statement under subsection (a) to the appropriate board. At least thirty (30) days before the presentation, the department shall publish notice in the Indiana Register of:

(1) the proposed policy or statement;

(2) the availability for public inspection of all materials relied upon by the department in the development of the proposed policy or statement;

(3) the date, time, and location of the presentation under this subsection to the appropriate board; and

(4) the opportunity for a person to comment to the department and the appropriate board on the proposed policy or statement before or at the time of the presentation under this subsection.

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The technical secretary shall provide to the board at the time of the presentation under this subsection a summary response to each comment made by a person under subdivision (4). The proposed policy or statement may not be put into effect until thirty (30) days after the policy or statement is made available for public inspection and comment and presented to the appropriate board.

(b) (d) If the department utilizes a policy or statement described in subsection (a), the department shall distribute:

- (1) two (2) copies of the policy or statement to the publisher of the Indiana Register for publication in the Indiana Register; and**
- (2) the copies required under IC 4-23-7.1-26 to the Indiana library and historical department.**

(c) (e) The department shall:

- (1) maintain a current list of all department policies and statements described in subsection (a) that the department may use in the department's external affairs; and**
- (2) update the list at least one (1) time each month.**

(d) (f) The department shall include the following information on the list described in subsection (c) (e) for each policy or statement:

- (1) The title of the policy or statement.**
- (2) The identification number of the policy or statement.**
- (3) The date the policy or statement was originally adopted.**
- (4) The date the policy or statement was last revised.**
- (5) A reference to all other policies or statements described in subsection (a) that are repealed or amended by the policy or statement.**
- (6) A brief description of the subject matter of the policy or statement.**

(e) (g) At least one (1) time every three (3) months, the department shall distribute two (2) copies of the list maintained and updated under subsection (c) (e) to the following:

- (1) The publisher of the Indiana Register.**
- (2) The Indiana library and historical department.**

SECTION 7. IC 13-14-9-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.5. The technical secretary of each board shall do the following with respect to each rule proposed by the board:

- (1) Consider convening a work group or advisory committee consisting of persons with interest and expertise in the subject of the proposed rule to assist the board in developing the proposed rule.**
- (2) Explain to the board before any hearing under this**

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chapter:

- (A) the reason for the proposed rule;
- (B) the substantive choices the board must make in consideration of the proposed rule; and
- (C) the positions of all interested parties, including the department, with respect to the proposed rule.
- (3) Consider and respond to questions from the board.
- (4) Serve as the board's point of contact with respect to:
 - (A) the board's agenda;
 - (B) activity of work groups or advisory committees established under subdivision (1);
 - (C) suggestions with respect to proposed rules by the department or any other entity under IC 13-14-8-5; and
 - (D) any other matter related to the board's rulemaking activities.
- (5) Write all proposed rules the board agrees to consider for adoption.
- (6) Identify potentially interested parties affected by a proposed rule.
- (7) Make best efforts to keep interested parties identified under subdivision (6) apprised of proposed rules.
- (8) Maintain and make available to the public a record of all board activity with respect to each proposed rule.
- (9) Serve as a hearing officer for the board as directed by the board.

SECTION 8. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. **Except as provided in section 7 of this chapter**, the ~~department~~ **technical secretary** shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Identify the authority under which the proposed rule is to be adopted.
- (2) Describe the subject matter and the basic purpose of the proposed rule. ~~The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.~~
- (3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.
- (4) Request the submission of alternative ways to achieve the



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purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

(7) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), contain a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.

SECTION 9. IC 13-14-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. **Except as provided in section 8 of this chapter, the department technical secretary** shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Contain the full text of the proposed rule, as provided under IC 4-22-2-24(c).

(2) Contain a summary of the response of the ~~department~~ **technical secretary** to written comments submitted under section 3 of this chapter during the first public comment period.

(3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the ~~commissioner's~~ **technical secretary's** written findings under section 7 of this chapter, if applicable.

(5) Contain any changes to the information included in the notice under section 3 of this chapter.

(6) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), contain a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.

SECTION 10. IC 13-14-9-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.5. (a) Except for a rule:

(1) that has been preliminarily adopted by a board in a form that is:

(A) identical to; or

(B) not substantively different from;

the proposed rule published in a second notice under section 4 of this chapter; or

(2) for which the ~~commissioner~~ **technical secretary** has made a

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determination and prepared written findings under section 7 or 8 of this chapter;
a board may not adopt a rule under this chapter until the board has conducted a third public comment period that is at least twenty-one (21) days in length.

(b) The ~~department~~ **technical secretary** shall publish notice of a third public comment period with the:

- (1) text; ~~and~~
- (2) summary; ~~and~~
- (3) **fiscal analysis;**

that are required to be published in the Indiana Register under section 5(a)(2) of this chapter.

(c) The notice of a third public comment period that must be published in the Indiana Register under subsection (b) must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter.

SECTION 11. IC 13-14-9-5, AS AMENDED BY P.L.224-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A board may not adopt a rule until all of the following occur:

- (1) The board holds a board meeting on the proposed rule.
- (2) The ~~department~~, **technical secretary**, after approval of the proposed rule by the board under subsection (c), publishes the following in the Indiana Register as provided in IC 4-22-2-24(c):
 - (A) The full text of the proposed rule, including any amendments arising from the comments received before or during the meeting held under subdivision (1).
 - (B) A summary of the response of the ~~department~~ **technical secretary** to all comments received at the meeting held under subdivision (1).
 - (C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.
- (3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.
- (4) If a third public comment period is required under section 4.5 of this chapter, the ~~department~~ **technical secretary** publishes notice of the third public comment period in the Indiana Register.



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(b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

(1) proceed to publication under subsection (a)(2);

(2) be subject to additional comments under section 3 or 4 of this chapter, considering any written finding made by the ~~commissioner~~ **technical secretary** under section 7 or 8 of this chapter; or

(3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

(d) At each board meeting held on a proposed rule, the board shall hear testimony and hold discussion with respect to the fiscal impact of the proposed rule. Before adoption of the proposed rule, the board must find that the fiscal impact is reasonable and acceptable.

SECTION 12. IC 13-14-9-6, AS AMENDED BY P.L.224-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. In addition to the requirements of section 8 of this chapter, the ~~department~~ **technical secretary** shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

(1) The full text of the proposed rule, as most recently prepared by the ~~department~~ **technical secretary**.

(2) The written responses of the ~~department~~ **technical secretary** to all comments received:

(A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;

(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is not required under section 4.5 of this chapter; or

(C) during:

(i) a third public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter; and

(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;

for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is required under section 4.5

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1 of this chapter.

2 (3) The full text of the legislative services agency fiscal analysis
3 if a fiscal analysis is required under IC 4-22-2-28.

4 SECTION 13. IC 13-14-9-7 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) Unless a board
6 determines under section 5(c)(2) of this chapter that a proposed rule
7 should be subject to additional comments, section 3 of this chapter
8 does not apply to a rulemaking action if the ~~commissioner~~ **board**
9 determines that the rulemaking policy alternatives available to the
10 ~~department~~ **board** are so limited that the public notice and comment
11 period under section 3 of this chapter would provide no substantial
12 benefit to:

- 13 (1) the environment; or
14 (2) persons to be regulated or otherwise affected by the proposed
15 rule.

16 (b) If the ~~commissioner~~ **board** makes a determination under
17 subsection (a), the ~~commissioner~~ **technical secretary** shall prepare
18 written findings under this section. The full text of the ~~commissioner's~~
19 written findings shall be included in the public notice provided under
20 section 4 of this chapter.

21 SECTION 14. IC 13-14-9-8 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) Unless a board
23 determines under section 5(c)(2) of this chapter that a proposed rule
24 should be subject to additional comments, sections 3 and 4 of this
25 chapter do not apply to a rulemaking action if the ~~commissioner~~ **board**
26 determines that:

- 27 (1) the proposed rule constitutes:
28 (A) an adoption or incorporation by reference of a federal law,
29 regulation, or rule that:
30 (i) is or will be applicable to Indiana; and
31 (ii) contains no amendments that have a substantive effect
32 on the scope or intended application of the federal law or
33 rule;
34 (B) a technical amendment with no substantive effect on an
35 existing Indiana rule; or
36 (C) a substantive amendment to an existing Indiana rule, the
37 primary and intended purpose of which is to clarify the
38 existing rule; and
39 (2) the proposed rule is of such nature and scope that there is no
40 reasonably anticipated benefit to the environment or the persons
41 referred to in section 7(a)(2) of this chapter from the following:
42 (A) Exposing the proposed rule to diverse public comment

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under section 3 or 4 of this chapter.

(B) Affording interested or affected parties the opportunity to be heard under section 3 or 4 of this chapter.

(C) Affording interested or affected parties the opportunity to develop evidence in the record collected under sections 3 and 4 of this chapter.

(b) If the ~~commissioner~~ **board** makes a determination under subsection (a), the ~~commissioner~~ **technical secretary** shall prepare written findings under this section. The full text of the ~~commissioner's~~ written findings shall be:

(1) published in the Indiana Register before the public meeting held under section 5(a)(1) of this chapter; and

(2) included in the written materials to be considered by the board at the public meeting held under section 5(a)(1) of this chapter.

SECTION 15. IC 13-14-9-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. The board may reject a proposed rule under section 9(4) of this chapter if one (1) of the following conditions exists:

(1) The following occurs or has occurred:

(A) under section 8 of this chapter, sections 3 and 4 of this chapter did not apply to the proposed rule; and

(B) either:

(i) the board determines that necessary amendments to the proposed rule will affect persons that reasonably require an opportunity to comment under section 4 of this chapter, considering the criteria set forth in section 8(2) of this chapter; or

(ii) the board determines that due to the fundamental or inherent structure or content of the proposed rule, the only reasonably anticipated method of developing a rule acceptable to the board is to require the ~~department~~ **technical secretary** to redraft the rule and to obtain the public comments under section 4 of this chapter; or

(2) the following occurs or has occurred:

(A) the proposed rule was subject to sections 3 and 4 of this chapter; and

(B) either:

(i) the board makes a determination set forth in subdivision (1)(B)(i) or (1)(B)(ii); or

(ii) the board determines that, due to a procedural or other defect in the implementation of the requirements under sections 3 and 4 of this chapter, an interested or affected

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1 party will be unfairly and substantially prejudiced if the
 2 public comment period under section 4 of this chapter is not
 3 again afforded and that no reasonable alternative method to
 4 obtain public comments is available to the interested or
 5 affected party other than the public comment period under
 6 section 4 of this chapter.

7 SECTION 16. IC 13-14-9.5-1.1, AS ADDED BY P.L.146-2001,
 8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2003]: Sec. 1.1. (a) This section applies to the following:

10 (1) A rule that is required to receive or maintain:

11 (A) delegation;

12 (B) primacy; or

13 (C) approval;

14 for state implementation or operation of a program established
 15 under federal law.

16 (2) A rule that is required to begin or continue receiving federal
 17 funding for the implementation or operation of a program.

18 (b) A rule described in subsection (a) does not expire under this
 19 chapter.

20 (c) In the seventh year after the effective date of a rule or an
 21 amendment to a rule described in subsection (a), the ~~department~~
 22 **technical secretary of the board that adopted the rule or**
 23 **amendment** shall publish a notice in the Indiana Register. The notice
 24 may contain a list of several rules that have been effective for seven (7)
 25 years. A separate notice must be published for each board with
 26 rulemaking authority. A notice under this subsection must provide for
 27 the following:

28 (1) A written comment period of at least thirty (30) days.

29 (2) A request for comments on specific rules that should be
 30 reviewed through the regular rulemaking process under
 31 IC 13-14-9.

32 (3) A notice of public hearing before the appropriate board.

33 (d) The ~~department~~ **technical secretary** shall:

34 (1) prepare responses to all comments received during the
 35 comment period; and

36 (2) provide all comments and responses to the board during the
 37 public board hearing;

38 described in subsection (c).

39 (e) The board, after considering the written comments and
 40 responses, as well as testimony at the public hearing described in
 41 subsection (c), shall direct the ~~department~~ **technical secretary** on
 42 whether additional rulemaking actions must be initiated to address

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concerns raised to the board.

(f) For the rules described in subsection (a) that are effective on or before July 1, 2001, the notice described in subsection (c) shall be published in the Indiana Register before December 31, 2008.

SECTION 17. IC 13-17-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The board consists of the following ~~eleven (11)~~ **twelve (12)** members:

(1) The following ex officio, **nonvoting** members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing employed by an entity that has applied for or received a Title V operating permit.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

An individual appointed under this subdivision must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

(3) One (1) nonvoting advisory member who:

(A) is an economist; and

(B) shall be appointed by the governor.

SECTION 18. IC 13-17-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~ **(4) five (5)** of the appointed members of the board may be members of the same political party.

SECTION 19. IC 13-17-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. ~~Six (6)~~ **Five (5)** members of the board ~~four (4) of whom must be appointed members of the board;~~ constitute a quorum.

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SECTION 20. IC 13-17-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The governor shall annually select:

- (1) one (1) of the ~~eight (8)~~ appointed members of the board to serve as chairman; and
- (2) another of the appointed members of the board to serve as vice chairman.

SECTION 21. IC 13-17-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board shall select, from a list of ~~three (3)~~ **five (5)** qualified individuals recommended by the ~~governor; an independent third party who is not an employee of the state~~ **director of the office of environmental adjudication under IC 4-21.5-7-4, an individual** to serve as technical secretary of the board.

(b) During the interim between meetings of the board, the ~~department~~ **technical secretary** shall do the following:

- (1) Handle correspondence.
- (2) Make or arrange for investigations and surveys.
- (3) Obtain, assemble, or prepare reports and data as directed by the board.
- (4) Carry out responsibilities under IC 13-14-9-2.5.**

(c) The technical secretary:

- (1) shall review all materials prepared for the board by the department to make any necessary revisions; Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary. The technical secretary**
- (2) is not a voting member of the board; and**
- (3) is subject to dismissal under IC 4-21.5-7-4.**

SECTION 22. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) **Subject to IC 4-21.5-7-4(e),** the board may select, from a list of ~~three (3)~~ **five (5)** qualified individuals recommended by the ~~governor; an independent third party who is not an employee of the state~~ **director of the office of environmental adjudication under IC 4-21.5-7-4, an individual** to serve as legal counsel. The legal counsel shall do the following:

- (1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.
- (2) Review all materials prepared for the board by the **technical secretary and the department** for legal accuracy and sufficiency and direct the **technical secretary and the department** to make any necessary revisions.

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(b) ~~Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel.~~ The legal counsel:

(1) is not a voting member of the board; and

(2) is subject to dismissal under IC 4-21.5-7-4.

SECTION 23. IC 13-18-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board consists of the following ~~eleven (11)~~ **twelve (12)** members:

(1) The following ex officio **nonvoting** members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing employed by an entity that holds an NPDES major permit.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

(3) One (1) nonvoting advisory member who:

(A) is an economist; and

(B) shall be appointed by the governor.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 24. IC 13-18-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~ **(4) five (5)** of the appointed members of the board may be members of the same political party.

SECTION 25. IC 13-18-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. ~~Six (6)~~ **Five (5)** members of the board ~~four (4) of whom must be appointed members of the board;~~ constitute a quorum.

SECTION 26. IC 13-18-1-11 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.(a) The board shall
 2 select, from a list of ~~three (3)~~ **five (5)** qualified individuals
 3 recommended by the ~~governor; an independent third party who is not~~
 4 **an employee of the state director of the office of environmental**
 5 **adjudication under IC 4-21.5-7-4, an individual** to serve as technical
 6 secretary of the board.

7 (b) Between meetings of the board, the ~~department~~ **technical**
 8 **secretary** shall do the following:

9 (1) Handle correspondence.

10 (2) Make or arrange for investigations and surveys.

11 (3) Obtain, assemble, or prepare reports and data as directed by
 12 the board.

13 **(4) Carry out responsibilities under IC 13-14-9-2.5.**

14 (c) The technical secretary:

15 **(1) shall review all materials prepared for the board by the**
 16 **department to make any necessary revisions; Provisions of this**
 17 **chapter concerning terms of appointment, vacancies, and**
 18 **compensation of appointed board members apply to the technical**
 19 **secretary. The technical secretary**

20 **(2) is not a voting member of the board; and**

21 **(3) is subject to dismissal under IC 4-21.5-7-4.**

22 SECTION 27. IC 13-18-1-12 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12.(a) **Subject to**
 24 **IC 4-21.5-7-4(e),** the board may select, from a list of ~~three (3)~~ **five (5)**
 25 qualified individuals recommended by the ~~governor; an independent~~
 26 **third party who is not an employee of the state director of the office**
 27 **of environmental adjudication under IC 4-21.5-7-4, an individual**
 28 to serve as legal counsel. The legal counsel shall do the following:

29 (1) Advise the board on legal matters or proceedings arising from
 30 the exercise of the board's duties.

31 (2) Review all materials prepared for the board by the **technical**
 32 **secretary and the** department for legal accuracy and sufficiency
 33 and direct the **technical secretary and the** department to make
 34 any necessary revisions.

35 (b) ~~Provisions of this chapter concerning terms of appointment,~~
 36 ~~vacancies, and compensation of appointed board members apply to the~~
 37 ~~legal counsel.~~ The legal counsel:

38 **(1) is not a voting member of the board; and**

39 **(2) is subject to dismissal under IC 4-21.5-7-4.**

40 SECTION 28. IC 13-19-2-2 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board
 42 consists of ~~thirteen (13)~~ **fourteen (14)** members as follows:



(1) The following ex officio **nonvoting** members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following ten (10) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

(I) One (1) representative of the solid waste management industry.

(J) One (1) representative of the solid waste management districts.

(3) One (1) nonvoting advisory member who:

(A) is an economist; and

(B) shall be appointed by the governor.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 29. IC 13-19-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~five~~ **six (6)** of the appointed members of the board may be members of the same political party.

SECTION 30. IC 13-19-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. ~~Seven (7)~~ **Six (6)** members of the board ~~four (4) of whom must be appointed members of the board;~~ constitute a quorum.

SECTION 31. IC 13-19-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. The governor shall annually select:

(1) one (1) of the ~~ten (10)~~ appointed members of the board to serve as chairman; and

(2) another of the appointed members of the board to serve as vice



chairman.

SECTION 32. IC 13-19-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.(a) The board shall select, from a list of ~~three (3)~~ **five (5)** qualified ~~persons~~ **individuals** recommended by the ~~governor, an independent third party who is not an employee of the state director of the office of environmental adjudication under IC 4-21.5-7-4, an individual~~ to serve as technical secretary of the board.

(b) During the interim between meetings of the board, the ~~department technical secretary~~ shall do the following:

- (1) Handle correspondence.
- (2) Make or arrange for investigations and surveys.
- (3) Obtain, assemble, or prepare reports and data as directed by the board.
- (4) Carry out responsibilities under IC 13-14-9-2.5.**

(c) The technical secretary:

- (1)** shall review all materials prepared for the board by the department to make any necessary revisions; ~~Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary. The technical secretary~~
- (2)** is not a voting member of the board; **and**
- (3) is subject to dismissal under IC 4-21.5-7-4.**

SECTION 33. IC 13-19-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.(a) **Subject to IC 4-21.5-7-4(e)**, the board may select, from a list of ~~three (3)~~ **five (5)** qualified ~~persons~~ **individuals** recommended by the ~~governor, an independent third party who is not an employee of the state director of the office of environmental adjudication under IC 4-21.5-7-4, an individual~~ to serve as legal counsel. The legal counsel shall do the following:

- (1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.
- (2) Review all materials prepared for the board by the **technical secretary and the department** for legal accuracy and sufficiency and direct the **technical secretary and the department** to make any necessary revisions.

(b) ~~Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel:~~

- (1)** is not a voting member of the board; **and**
- (2) is subject to dismissal under IC 4-21.5-7-4.**



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1 SECTION 34. THE FOLLOWING ARE REPEALED [EFFECTIVE
2 JULY 1, 2003]: IC 13-17-2-6; IC 13-18-1-4; IC 13-19-2-4.

3 SECTION 35. [EFFECTIVE JULY 1, 2003] (a) **IC 13-14-1-11.5(b),**
4 **as amended by this act, applies only to proposed policies or**
5 **statements presented by the department of environmental**
6 **management to the appropriate board after June 30, 2003.**

7 (b) The following, all as amended by this act, apply only to
8 proposed rules for which the technical secretary provides the first
9 notice in the Indiana Register of a public comment period required
10 by IC 13-14-9 after June 30, 2003:

11 (1) IC 4-22-2-28.

12 (2) IC 13-14-9

13 (3) IC 13-14-9.5-1.1.

14 (c) This SECTION expires January 1, 2004.

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